BEFORE THE ARIZONA DEPARTMENT OF REVENUE

In the Matter of	)	**DECISION OF HEARING OFFICER**
[REDACTED]	)	
UTI # [REDACTED]	)	**Case No. 200600155-I**
	)	

[REDACTED] (Taxpayer) requested that this matter be resolved through the submission of written memoranda. Taxpayer timely filed his opening memorandum on December 15, 2006. The Individual Income Tax Audit Section (Section) of the Arizona Department of Revenue (Department) timely filed its response memorandum on January 16, 2007. Taxpayer's reply memorandum was due February 16, 2007 but has not been received as of this date. Therefore, this matter is ready for ruling.

FINDINGS OF FACT

Based on information obtained from the Internal Revenue Service (IRS) through the Department's exchange of information agreement with the IRS (I.R.C. § 6103(d)(1)), the Section audited Taxpayer's 2000 and 2001 Arizona income tax returns which Taxpayer timely filed as married filing separate. The Section disallowed the itemized deductions claimed by Taxpayer for each year and instead allowed the standard deduction. The Section also disallowed the $500 credit that Taxpayer claimed on his 2001 Arizona return for contributions to school tuition organizations. The Section accordingly issued proposed assessments on [REDACTED] for 2000 and 2001 that included tax, a late payment penalty for 2000 and interest. Taxpayer timely

protested the assessments. Based on additional information, the Section subsequently modified the assessments twice to allow a portion of the itemized deductions for each year and to allow the $500 credit for contributions to school tuition organizations for 2001. The issue is the propriety of the modified assessments dated [REDACTED].

CONCLUSIONS OF LAW

An assessment of additional income tax is presumed correct. *Arizona State Tax Commission v. Kieckhefer,* 67 Ariz. 102, 191 P.2d 729 (1948). Taxpayer has provided insufficient evidence to prove that the Section's modified assessments are incorrect. Therefore, the modified assessments dated [REDACTED] must be upheld as being correct.

With regard to itemized deductions, the Arizona Revised Statutes provide at A.R.S. § 43-1042.A:

> Except as provided by subsections B, D and E of this section, at the election of the taxpayer, and in lieu of the standard deduction allowed by § 43-1041, in computing taxable income the taxpayer may take the amount of itemized deductions allowable for the taxable year pursuant to subtitle A, chapter 1, subchapter B, parts VI and VII, but subject to the limitations prescribed by §§ 67, 68 and 274, of the internal revenue code.

With regard to recordkeeping, Arizona law requires taxpayers to keep and preserve "suitable records and other books and accounts necessary to determine the tax for which the person is liable for the period prescribed in § 42-1104." *See* A.R.S.

§ 42-1105.D. Taxpayer has provided insufficient evidence to show that he is entitled to claim itemized deductions in amounts greater than those allowed by the Section. Taxpayer has provided no documentation to show that he is entitled to deduct personal property taxes for either year.

With regard to medical expenses, Treas. Reg. § 1.213-1(e)(1)(iii) provides in pertinent part:

> **. . . a capital expenditure for permanent improvement or betterment of property which would not ordinarily be for the purpose of medical care (within the meaning of this paragraph) may, nevertheless, qualify as a medical expense to the extent that the expenditure exceeds the increase in the value of the related property, if the particular expenditure is related directly to medical care. . .**

Taxpayer has produced no evidence to show to what extent the expenditure for the swimming pool exceeds the increase in the value of his house as a result of the installation of the swimming pool. Taxpayer has produced insufficient evidence to prove that he is entitled to claim any expense for the swimming pool as an itemized deduction. Taxpayer has provided insufficient evidence to show that the Section improperly denied medical expenses.

As previously noted, the Section modified the assessment for 2001 to allow the $500 credit for contributions to school tuition organizations. Therefore, Taxpayer may not claim a deduction for this amount as a charitable contribution. *See* A.R.S. § 43-1089.D. Taxpayer has provided insufficient evidence

to show that the Section improperly denied charitable contributions.

Taxpayer requests that his filing status for 2000 and 2001 be changed to married filing joint from married filing separate. However, A.R.S. § 43-311.C provides in pertinent part:

> A joint return may not be made under subsection A of this section:
> 1. After the expiration of four years from the last date prescribed by law for filing the return for such taxable year, determined without regard to any extension of time granted to either spouse.
> 2. After there has been mailed to either spouse, with respect to such taxable year, a notice of deficiency under § 42-1108, if the spouse, as to such notice, appeals to the department under § 42-1251, or appeals to the state board under § 42-1253.

Under A.R.S. § 43-311.C.1, the four-year period has expired for 2000 and 2001. Additionally, Taxpayer was mailed notices of deficiency for 2000 and 2001 under A.R.S. § 42-1108 and Taxpayer appealed to the Department under A.R.S. § 42-1251. *See* A.R.S. § 43-311.C.2. Therefore, A.R.S. §§ 43-311.C.1 and 43-311.C.2 prohibit the filing of a joint return in the present case.

The late payment penalty may be abated only upon a showing that the failure to timely pay is due to reasonable cause and not due to wilful neglect. *See* A.R.S. § 42-1125.D. "Reasonable cause" is generally defined to mean the exercise of "ordinary business care and prudence." *Daley v. United States,* 480 F. Supp. 808 (D.N.D. 1979). Reasonable cause has not been

established. Therefore, the imposition of the late payment penalty for tax year 2000 must be upheld.

As to the interest portion of the assessments, A.R.S. § 42-1123.C provides that if the tax "or any portion of the tax is not paid" when due "the department shall collect, as a part of the tax, interest on the unpaid amount" until the tax has been paid. For Arizona purposes, therefore, interest is a part of the tax and generally may not be abated unless the tax to which it relates is found not to be due for whatever reason. The tax was due in this case and the associated interest cannot be abated.

Based on the foregoing, the Section's modified assessments dated [REDACTED] are affirmed.

DATED this 22nd day of February, 2007.

ARIZONA DEPARTMENT OF REVENUE
APPEALS SECTION

[REDACTED]
Hearing Officer

Original of the foregoing sent by
certified mail to:

[REDACTED]

Copy of the foregoing delivered to:

Arizona Department of Revenue
Individual Income Tax Audit Section